

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF PARKWAY VILLAGE

Parkway Village Equity Corporation,

Settling Party.

Proceeding Pursuant to Section
122(h)(1) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, 42 U.S.C. § 9622(h)(1)

)
) AGREEMENT FOR RECOVERY
) OF PAST RESPONSE COSTS

)
) U.S. EPA Region 2 Docket No.
) CERCLA-02-2008-2025

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and was further delegated in Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

2. This Agreement is made and entered into by EPA and Parkway Village Equity Corporation ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Parkway Village Site located at 81-26 150th Street, Jamaica, Queens County, New York (the "Site"). The Site is a co-operative residential complex owned by Settling Party, consisting of approximately 109 individual buildings each of which is a one- and two- story structure on a less than one-eighth acre parcel of land. Based upon sampling conducted by EPA, asbestos-containing material ("ACM") was found at the Site. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).



4. The buildings at the Site are heated with steam produced in a common boiler room and are connected by subterranean steam lines covered with ACM insulation contained within concrete pipe enclosures.

5. At various times between 2002 and 2006, the maintenance staff for the Site conducted excavations to repair leaking or broken subsurface steam pipes and the ACM surrounding the piping became friable. In addition, on repeated occasions during the period from 2002 through October 2006, Settling Party's maintenance staff removed asbestos-containing pipe insulation from the steam pipes. Loose ACM was left on various surface areas at the Site. The insulation was then disposed by its reburial either directly in the ground adjacent to the steam pipe or in bags that were buried in the vicinity of the steam pipe repair. Settling Party's maintenance staff were not licensed asbestos abatement contractors.

6. Removal of the ACM from the piping without properly wetting the material renders the ACM friable, releasing asbestos particles into the environment. The disposal of the ACM by reburial in a dry state, rather than through proper wetting and such disposal as provided under the Clean Air Act National Emission Standards for Hazardous Pollutants ("NESHAP") for Asbestos, 40 C.F.R. Part 61, Subpart M, keeps the ACM in a friable state creating a potential threat of an ongoing hazardous release for example, at any point when a reburied bag is unbagged or disturbed during a maintenance operations.

7. On October 4, 2006, EPA's National Enforcement Investigation Center ("NEIC") formally requested sampling and support from EPA's Removal Program.

8. Between October 11, 2006 and November 3, 2006, the Acting Division Director for EPA, Region 2, Emergency and Remedial Response Division granted verbal authorizations to conduct a time-critical removal action.

9. Pursuant to the initial authorization, EPA initiated a CERCLA removal action on October 23, 2006 to address the potential release of ACM from the Site and ensure that the ACM within the search warrant area was properly secured and disposed. Excavated areas were sampled and buried and exposed ACM was properly removed and disposed by EPA. In providing such response actions, EPA has incurred response costs at or in connection with the Site. EPA completed fieldwork and demobilized from the Site on November 17, 2006. Based on the facts known to EPA at this time and providing that a change in circumstances does not arise at the Site, EPA does not currently anticipate taking additional response actions at the property

10. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

11. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

12. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. The signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally Settling Party represented by him or her.

IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site from October 23, 2006 through July 1, 2008.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "Settling Party" shall mean Parkway Village Equity Corporation.

k. "Site" shall mean the Parkway Village Site located at 81-26 150th Street, Jamaica, Queens County, New York.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

14. Settling Party represents that it intends to refinance its mortgage. At the date of closing of its refinancing process, payment shall be made by certified or cashier's check made payable or endorsed by Settling Party to the "EPA Hazardous Substance Superfund" in the amount of \$490,612.18, plus interest on such amount from July 1, 2008 through the date of payment, in reimbursement of Past Response Costs. Should Settling Party's refinancing application not be approved, EPA retains the right to recover its Past Response Costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

15. At the time of payment, Settling Party shall send notice that such payment has been made to the EPA contacts listed in Paragraph 31 and also to:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: Richard Rice, FINANCE
MS: NWD
Cincinnati, Ohio 45268
E-mail: AcctsReceivable.CINWD@epa.gov

Said notice shall include the date of the payment amount, the name of this Site, the Index Number

of this Settlement Agreement, and the name and address of Settling Party.

VI. FAILURE TO COMPLY WITH AGREEMENT

16. If Settling Party violates any requirement of this Agreement, Settling Party shall pay to EPA, as a stipulated penalty, \$1,000 per violation per day.

17. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA required under Paragraph 16 shall be identified as "stipulated penalties" and shall be made in accordance with the following procedures set forth in Paragraph 18.

18. The payment to be made pursuant to Paragraph 16 above shall be remitted to EPA's account at Federal Reserve Bank of New York via Electronic Funds Transfer ("EFT"). To make payment by EFT, Settling Party shall provide the following information to its bank:

- i. Amount of payment
- ii. Bank: Federal Reserve Bank of New York
- iii. Account code for Federal Reserve Bank of New York account receiving the payment:
68010727
- iv. Federal Reserve Bank of New York ABA Routing Number: 021030004
- v. SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- vii. Name of Settling Party: Parkway Village Equity Corporation
- viii. Case number: CERCLA-02-2008-2025
- vix. Site/Spill identifier: YV

Along with this information, Settling Party shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank of New York.

19. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but such payment need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous

accrual of separate penalties for separate violations of this Agreement.

20. In addition to the stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

21. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

22. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

23. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 22. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. liability for past response costs should Settling Party's refinancing application not be approved.

24. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTling PARTY

25. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

26. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

27. Settling Party agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous

substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

28. The waiver in Paragraph 27 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Except as provided in Paragraph 22, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraph 22, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

30. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

31. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

32. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the

addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Dilshad Perrera
On-Scene Coordinator
Response Team
Response and Prevention Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue, Building 209 Mail Code: MS-211
Edison, NJ 08837-3679

and to:

Office of Regional Counsel
Attn: Parkway Village Site Attorney
U.S. EPA, Region 2

290 Broadway, 17th Floor
New York, NY 10007-1866

As to Settling Party: Richard A. Finkel, Esq.
Meissner, Kleinber & Finkel, LLP.
275 Madison Avenue, Ste. 1000
New York, NY 10016

XII. INTEGRATION

35. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIII. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which it is signed by the Director of the Emergency and Remedial Response Division of EPA Region 2 or his delegatee.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:


GEORGE PAVLOU

8/6/08
Date

Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

THE UNDERSIGNED SETTTLING PARTY enters into this Consent Order in the matter of Index Number CERCLA-02-2008-2025 relating to the Parkway Village Site located in Jamaica, Queens County, New York:

NAME AND ADDRESS OF SETTTLING PARTY:
(please print or type)

Parkway Village Equity Corp.
81-26 150TH Street.
Jamaica, N.Y. 11435

NAME AND TITLE OF SIGNATORY:
(please print or type)

Alan Bentz-Letts
Alan Bentz-Letts
President, Board of Directors

SIGNATURE

August 4, 2008.

DATE